

SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE ON CHAPTER VIII (SETTLEMENT OF DIFFERENCES - INTERPRETATION)

NOTES OF THE EIGHTEENTH MEETING

Held at 10.30 a.m., Tuesday, 17 February 1948

Changes in the Notes of the Seventeenth Meeting (E/CONF.2/C.6/W.102)

The second sentence referring to paragraph 2 of Article 89 should be amended to read:

"Also on the suggestion of the representative of Iraq, the Sub-Committee agreed to include in the report a note to the effect that the 'matter' to be dealt with through the procedures of Chapter VIII is the claim or nullification or impairment of a benefit and not the action, inaction, measure or situation referred to in sub-paragraphs (a), (b) or (c)."

In the notes of the discussion on paragraph 3 of Article 90 the first sentence should be changed to read:

"At the suggestion of the representative of Iraq the Sub-Committee agreed to add after 'the release of a Member or Members' the word 'affected' in this paragraph and in the first sentence of paragraph 3 of Article 90-A."

Under the heading Article 90-A, paragraph 3 the following should be added:

"The Sub-Committee agreed, on the suggestion of the representative of Iraq, to include a note in its report to the effect that paragraph 3 does not allow the proposal by the Conference of a suspension or withdrawal of a measure not in conflict with the Charter."

Discussion of the Text of Articles Annexed to the Notes of the Sub-Committee Meeting

Article 89, Paragraph 3

There was some discussion on the desirability of changing the word "Charter" in this paragraph to "Chapter" and on the desirability of including a provision in this article which would require the Organization to be consulted on consultation or arbitration conducted under other chapters (as, for instance, under Article 41). It was noted that under the new text

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proposed for paragraph 2 of Article 92 the Organization would be expected to recognize consultation or investigation undertaken pursuant to other chapters as a substitute for similar procedures under the present Chapter. Accordingly, it seemed appropriate to include in the present Chapter a requirement that the Organization be informed of such other consultation or investigation in order that account might be taken of them if no settlement were reached under the other chapters and the matter had to be raised under Chapter VIII. It was suggested that a note might be included in the Sub-Committee's report that this provision in Article 89 should not be interpreted as requiring the Organization to be informed if the consultation or arbitration under the other chapters resulted in a final settlement satisfactory to the parties concerned.

Article 90, Paragraph 2 (v)

The Sub-Committee agreed to change this sub-paragraph to read:

"(v) in any matter arising under Article 89 (1) (b) or (c) make such recommendations to Members as will best assist the Members concerned and contribute to a satisfactory adjustment."

Article 90-A, Paragraph 1

The word "reserve" in the last sentence of this paragraph was corrected to read "reverse".

Article 90-A, Paragraph 3, last sentence

The Sub-Committee amended the text of this sentence, which had previously appeared in square brackets, to read:

"If the Conference considers that any nullification or impairment found to exist under Article 89 1 (b) or (c) is sufficiently serious to justify such action, it may authorize a release of a Member or Members to the extent and upon such conditions as will achieve the objects set out in Article 90 (2) (v)."

The Sub-Committee did not consider it advisable to add the word "affected" after "a release of a Member or Members" in this instance since it was conceivable that under this paragraph situations might have to be dealt with requiring the authorization of a release in respect of Members generally or at least in respect of some Members which might not be regarded as "affected".

Article 90-A, Paragraph 4

The Sub-Committee approved the following text of this paragraph:

"4. When any Member or Members suspend the performance of any obligation or grant of any concession to another Member in accordance with paragraph 3, the latter Member shall then be free not later than 60 days after such action is taken [or after the opinion of the International Court of Justice is given], to give notice of its withdrawal from the Organization. Such withdrawal shall become effective upon the /expiration of

expiration of 60 days from the day on which such notice is received by the Director-General."

The words in square brackets in the text of this paragraph were inserted provisionally pending further consideration after Articles 91 and 92 have been dealt with when it might be possible to replace them in part by a reference to the appropriate provisions of those articles.

Discussion of the Text of Articles 91 and 92 (E/CONF.2/C.6/W.99)

The Sub-Committee provisionally accepted the text of Article 91 annexed to the present notes.

In paragraph 3 of Article 91 the Sub-Committee inserted language from paragraph 2 of Article 65 of the Statute of the International Court of Justice to describe the material to accompany any statement or request for an advisory opinion.

Discussion of a new paragraph 6 proposed by the delegation of France concerning the exercise of rights under Article 36 of the Statute of the International Court was deferred pending further consideration of the texts of Articles 91 and 92 and of the resolution proposed in E/CONF.2/C.6/W.99.

Concerning paragraph 2 of Article 92, the representative of the United Kingdom indicated the intention of his delegation to propose an addition to the first sentence which would indicate that the other procedures which are not excluded by the Chapter are the "other procedures specifically provided for in certain parts of the Charter for consultation and settlement of differences arising out of those parts of the Charter."

Concerning paragraph 3, the representative of Colombia doubted that it would be possible to consider this paragraph until the proposals by the delegation of France concerning Article 36 of the Statute of the International Court had been dealt with.

ANNEX TO NOTES OF EIGHTEENTH MEETING OF THE  
SUB-COMMITTEE ON CHAPTER VIII

The following is the text of Article 91 resulting from that meeting:

Article 91

Reference to the International Court of Justice

1. The Organization may, in accordance with arrangements made pursuant to paragraph 2 of Article 96 of the Charter of the United Nations, request from the International Court of Justice advisory opinions on legal questions arising within the scope of the activities of the Organization.
  2. Any resolution or decision of the Conference under this Charter shall, upon the instance of any Member whose interests are thereby prejudiced, be subject to review by the International Court of Justice through the means of a request, in appropriate form, for an advisory opinion pursuant to the Statute of the Court.
  3. The request for an advisory opinion shall be accompanied by a statement to be furnished by the Organization in consultation with the Members substantially interested, in accordance with the Statute of the International Court of Justice, of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.
  4. Pending the delivery of the opinion of the International Court of Justice, the resolution or decision of the Conference shall have full force and effect; Provided that the Conference shall suspend the operation of any such resolution or decision pending the delivery of the opinion where in the view of the Conference damage difficult to repair would otherwise be caused to a Member concerned.
  5. The Organization shall consider itself as bound by the opinion of the International Court of Justice on any question referred by it to the Court. The resolution or decision in question shall be modified insofar as it does not accord with the opinion of the International Court of Justice.
- [The delegation of France proposed a new paragraph 6 on which discussion by the Sub-Committee was deferred.]

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